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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

EDWARD GUILLEN et al.,

Plaintiffs and Appellants,

v.

CENTEX HOMES et al.,

Defendants and Respondents.

E066028

(Super.Ct.No. RIC10010749)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge.  
Affirmed.

Edward Guillen, in pro. per.; Duran Law Office and Jack Duran, Jr., for Plaintiff  
and Appellant.

Leon Smith, in pro. per.; Duran Law Office and Jack Duran, Jr., for Plaintiff and  
Appellant.

Bertram Robison, in pro. per.; Duran Law Office and Jack Duran, Jr., for Plaintiff  
and Appellant.

Tracy Hurd, in pro. per.; Duran Law Office and Jack Duran, Jr., for Plaintiff and Appellant.

Newmeyer & Dillion, Philip D. Kopp, Leonard Polyakov, and Ben P. Ammerman, for Defendants and Respondents.

Plaintiffs and appellants Edward Guillen, Leon Smith, Bertram Robison, and Tracy Hurd are homeowners who brought suit (together with a number of other plaintiffs who are not party to this appeal) against certain entities involved in the construction of their homes, specifically, defendants and respondents Centex Homes (Centex), Centex Real Estate Corporation, Centex Real Estate Holding, LP, and Nomas Corp. Centex, a Nevada general partnership, is the entity that built and sold the homes. The other defendants are general partners of Centex. Trial of the matter was bifurcated into two phases, with the first focusing on claims arising from alleged construction defects and the second focusing on claims based on alleged fraud.

In the first phase of the trial, defendants prevailed in most respects, but the jury found in favor of plaintiffs on their cause of action against Centex under the Right to Repair Act, Civil Code section 895 et seq., and awarded monetary damages. Before the second phase of the trial, some of plaintiffs' counsel of record disassociated from the matter, and their lead attorney had to substitute out because a suspension of his license to practice law was about to take effect. Plaintiffs terminated the lead attorney's law firm and proceeded self-represented. Relatedly, also before the second phase of the trial, plaintiffs (and their counsel, while they had counsel) failed to comply with the trial

court's discovery orders in a number of respects. After a series of continuances, the trial court eventually imposed evidentiary and issue preclusion sanctions that left plaintiffs with no remaining viable claims. The trial court therefore dismissed plaintiffs' remaining causes of action rather than proceeding with the second phase of the trial.

In this appeal, plaintiffs contend the trial court erred by (1) excluding certain evidence from the first phase of the trial and (2) denying their request for a stay of proceedings and trial continuance to allow them additional time to obtain counsel to oppose the imposition of discovery sanctions and to represent them in the second phase of the trial.<sup>1</sup> We affirm the judgment.<sup>2</sup>

## I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs brought suit in June 2010, alleging that their homes, built by defendants in 2006 and 2007 as part of a new development, suffered from construction defects. The operative fourth amended complaint, filed in March 2014, asserts 11 causes of action: (1) strict products liability (in substance, a claim for defective construction under the Right to Repair Act); (2) breach of implied warranty; (3) breach of express warranty; (4) negligence; (5) breach of contract; (6) declaratory relief; (7) intentional

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<sup>1</sup> In this appeal, plaintiffs represented themselves during briefing but obtained counsel to represent them at oral argument.

<sup>2</sup> Plaintiffs' requests for judicial notice, filed June 9, 2017, are denied. The requests are procedurally deficient in numerous respects, including by failing to identify which documents, precisely, they wish us to notice from their prior writ filings, and failing to explain why they contend the documents are judicially noticeable and relevant to the present appeal. (Cal. Rules of Court, rule 8.252(a).)

misrepresentation; (8) concealment; (9) negligent misrepresentation; (10) promissory fraud; and (11) violation of Business and Professions Code § 17200.

In February 2014, the trial court severed trial of plaintiffs' fraud and unfair competition causes of action, causes of action 7 through 11, from trial of causes of action 1 through 6, based on alleged construction defects. On July 24, 2014, the trial court ordered the jury trial of plaintiffs' first through sixth causes of action to be conducted first, with the jury trial of the seventh through eleventh causes of action to be conducted later.<sup>3</sup>

After presentation of evidence in the first phase of the trial, the trial court entered a directed verdict in favor of Centex Real Estate Corp., Centex Real Estate Holding, LP, and Nomas Corp. on each of the causes of action at issue. The court found that those three entities were general partners of Centex and would be indirectly liable in that capacity for a judgment entered against Centex, but there was no evidence of their direct liability for any construction defects. The trial court also entered a separate directed verdict in favor of all defendants on plaintiffs' negligence cause of action, finding that there was no evidence of damages resulting from the alleged negligence.

Two causes of action were left for the jury to decide in the first phase of the trial, namely, the first cause of action for defective construction in violation of the Right to

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<sup>3</sup> The July 24, 2014, order also ordered a bench trial on a cross complaint filed by Centex Homes to be conducted between the two phases of the jury trial of plaintiffs' claims. The cross complaint is not at issue in this appeal.

Repair Act and the fifth cause of action for breach of contract, both as to Centex only.<sup>4</sup>

In March 2016, the jury returned a defense verdict on the breach of contract cause of action. The jury found in favor of plaintiffs on their Right to Repair Act claims and awarded them monetary damages.<sup>5</sup>

While the jury was deliberating in the first phase of trial, the trial court ordered the second phase of the trial set for January 8, 2016, and issued a case management order setting deadlines for discovery and pretrial motions.

In August 2015, defendants filed two separate motions to compel, seeking further discovery responses from, and monetary sanctions against, plaintiffs based on their failure to respond adequately to form and special interrogatories. The trial court granted the motions in part, ordering plaintiffs to provide verified supplemental responses, reserving ruling on the issue of sanctions, and setting a hearing on an order to show cause for failure to comply with discovery for October 9, 2015.

In September 2015, defendants brought a motion to preclude plaintiffs' experts from testifying in the second phase of the trial because of their failure to appear for depositions, or in the alternative to compel their depositions. That motion, too, was set for hearing on October 9, 2015.

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<sup>4</sup> It is not apparent from our record how causes of action 2, 3, and 6 were disposed of before the case reached the jury. But the matters at issue in this appeal do not require us to solve that mystery.

<sup>5</sup> Guillen was awarded \$8,500 plus costs; Robison and Hurd were awarded \$8,900 plus costs; Smith was awarded \$5,000 plus costs.

On October 9, 2015, the trial court granted defendants' motion to compel plaintiffs' experts' depositions and imposed monetary sanctions payable by plaintiffs' lead trial counsel, Jerry La Cues, but denied without prejudice defendants' request that plaintiffs' experts be precluded from testifying. The court ordered the expert depositions to commence no later than November 23, 2015. The court further found that plaintiffs had not complied with the court's orders regarding written discovery, imposed additional monetary sanctions payable by Jerry La Cues, and set an order to show cause hearing regarding compliance with those orders for November 6, 2015.

The order to show cause hearing was continued to November 9, 2015. The court then further continued the order to show cause hearing to December 11, 2015, after tentatively ruling that it intended to impose some form of evidentiary and issue preclusion sanctions for plaintiffs' continued failure to comply with the court's orders regarding written discovery. The court set a briefing schedule for defendants to file and serve a summary of the sanctions they were requesting, and for plaintiffs to respond to that summary. The court also continued the hearing on motions in limine for the second phase of the trial, previously set for November 13, 2015, until December 11, 2015, to coincide with the order to show cause hearing regarding discovery sanctions.

On December 11, 2015, the trial court issued tentative rulings on the pending motions in limine and motions for evidentiary and issue preclusion sanctions. The tentative rulings were largely in favor of defendants, including to grant of most of defendants' motions in limine and to grant each of the requested evidentiary and issue

preclusion sanctions. The court noted that there “has been a failure to respond to a wide range of discovery” by plaintiffs, including failure to comply with orders to supplement written discovery responses and to produce experts for deposition. At plaintiffs’ request, however, the trial court did not issue final rulings, continuing matters for a week.

On December 18, 2015, the trial court adopted its tentative rulings from December 11, 2015, as its final rulings. Plaintiffs were thus barred from introducing many categories of evidence and raising specified issues at trial. The trial court also confirmed the previously set trial date of January 8, 2016.

On December 23, 2015, on its own motion, the trial court set an order to show cause hearing to consider dismissing the causes of action at issue in the second phase of the trial. At the hearing, held on December 30, 2015, after argument from the parties, the court dismissed causes of action 7 through 11 of the fourth amended complaint “based on the inability of essentially any of the [plaintiffs] to present a case” in light of December 18, 2015, rulings that “precluded substantial items of evidence and substantially all of the issues due to failure to comply with discovery orders.” On March 9, 2016, the trial court entered judgments reflecting the results of first phase of the trial and the dismissal of the causes of action that were to have been tried in the second phase.

## II. DISCUSSION

### A. *Evidentiary Rulings*

#### 1. *Additional Background*

Before the first phase of the trial, the trial court granted defense motions in limine precluding plaintiffs from presenting evidence that signatures or stamps on design plans for the homes were forged or fraudulent, and excluding evidence regarding the licensing status or insurance coverage of any of Centex's subcontractors or design professionals (disputed evidence). The court found the probative value of the disputed evidence was substantially outweighed by the likelihood of undue consumption of time, undue prejudice, and confusion of issues, and therefore excluded the evidence from the first phase of the trial pursuant to Evidence Code section 352.

#### 2. *Applicable Law*

Evidence Code section 352 provides that the court "in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Our review is for an abuse of that discretion. (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 295-296.) An abuse of discretion occurs if the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1685 (*Boeken*).)



### 3. *Analysis*

Plaintiffs contend the trial court abused its discretion by excluding the disputed evidence from the first phase of trial, asserting that it was relevant to matters at issue in that phase, specifically, their causes of action for breach of contract and negligence. We find no abuse of discretion.

The express intent of the court in bifurcating the trial was to separate out adjudication of claims arising from alleged construction defects from claims arising from alleged fraud or unfair competition.<sup>6</sup> The trial court reasonably divided these issues by reference to plaintiffs' causes of action. In the first through sixth causes of action in fourth amended complaint, plaintiffs did not allege facts relating to the disputed evidence, including in their causes of action for breach of contract or negligence. Rather, those facts were alleged in relation to the seventh through eleventh causes of action.

Moreover, because the disputed evidence was the basis for plaintiffs' fraud claims to be adjudicated in phase two of the trial, also admitting it in the first phase would likely have rendered the second phase of the trial duplicative of the first in significant respects. At the very least, this would result in "undue consumption of time" in the meaning of Evidence Code section 352, and defeated one of the main purposes of bifurcation. Worse, plaintiffs would have then had two opportunities to show damages flowing from the same alleged facts, presented to two separate juries under two different sets of legal

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<sup>6</sup> Although plaintiffs opposed defendants' motions to bifurcate the trial, they do not argue on appeal that the trial court erred by granting those motions.

theories. The two juries could have returned inconsistent verdicts or verdicts that amounted to a double award of damages for plaintiffs. Any of these circumstances would have been fundamentally unfair to defendants.

Furthermore, there was no “manifest miscarriage of justice” as a result of the exclusion of the disputed evidence from phase one of the trial. (*Boeken, supra*, 127 Cal.App.4th at p. 1685.) The trial court’s orders regarding bifurcation, together with the exclusion of fraud evidence from the first phase of the trial, still left plaintiffs a full and fair opportunity to demonstrate that they suffered damages flowing from the forged or fraudulent stamps on design plans or from the use of inadequately licensed or insured subcontractors or design professionals in the second phase of the trial. The second phase of the trial never was held because plaintiffs’ remaining claims were dismissed after discovery sanctions left them essentially unable to present a case. But that subsequent development does not retroactively render the trial court’s evidentiary ruling regarding the disputed evidence “arbitrary, capricious, or patently absurd.” (*Boeken, supra*, at p. 1685.)

In short, plaintiffs have not demonstrated that the trial court’s exclusion of the disputed evidence from the first phase of the trial was an abuse of discretion.

## *B. Denial of Continuance*

### *1. Additional Background*

Although Jerry La Cues and his law firm served as plaintiffs’ lead counsel, several other firms had also associated as counsel of record for plaintiffs during the litigation.

One of the associated counsel withdrew from the matter by means of a notice of disassociation filed on June 19, 2015. On November 16, 2015, two more associated firms partially disassociated as counsel, continuing to represent certain plaintiffs who had settled with defendants, but withdrawing from representation of the plaintiffs who are respondents in this appeal.

La Cues and his law firm, the La Cues Law Group, formally substituted out of the matter with respect to Guillen, Robison, and Smith on November 24 and 25, 2015, with the plaintiffs each proceeding self-represented. At a trial readiness conference on December 4, 2015, La Cues and Hurd both stated on the record their understanding that Hurd too would be proceeding representing herself, though no substitution of counsel for La Cues and his firm had yet been filed with respect to her. La Cues needed to substitute out of the case because a suspension of his license to practice law was set to take effect on December 17, 2015. Hurd was allowed to appear on her own behalf at the trial readiness conference; the substitution of counsel with respect to Hurd was filed on December 10, 2015.

During the December 4, 2015, trial readiness conference, plaintiffs orally requested a trial continuance to allow time to find new counsel. Plaintiffs told the court that they were actively looking for an attorney to represent them. The court reserved ruling on the issue, noting that if plaintiffs were able to find counsel, it “might be inclined to continue the trial date to allow counsel to get up to speed,” but expressing “serious doubts” that plaintiffs would be able to find an attorney.

At the December 11, 2015, hearing on the pending motions in limine and motions for evidentiary and issue preclusion sanctions, plaintiffs represented that they were having difficulty getting their files from their former attorneys, and therefore had not seen the motions at issue. They also represented that they were actively working to find new counsel. The trial court therefore refrained from adopting its tentative opinions as final, and instead continued the matter for a week to allow plaintiffs an opportunity to respond.

On December 17, 2015, plaintiffs filed a document entitled “Objections of Plaintiffs to Hearing of Motions in Limine, Other Motions and Conferences Without Benefit of Legal Counsel; Plaintiffs’ Oppositions to Motions in Limine; Ex Parte Application to Continue Trial and All Related Dates; Declaration of Edward Guillen” (objections). (Some capitalization omitted.) In their objections, plaintiffs stated that they had been represented by Jerry La Cues of the La Cues Law Group since September 2009. Brett La Cues, of the same firm, had “assisted Jerry La Cues,” and the firm had associated several other attorneys to “assist in the matter,” but plaintiffs had “relied only on Jerry La Cues as their lead trial attorney.”

Plaintiffs further stated that on July 1, 2015, Jerry La Cues had been put on inactive status for failure to pay his bar dues. But plaintiffs “were told it was a simple oversight but there was nothing to worry about.” At that time, plaintiffs also first learned that Jerry La Cues had been suspended from practice or placed on inactive status on three previous occasions since 2012, including a 30-day suspension starting in July 2012, a 30-day suspension in starting in December 2012, and an approximately two month period

from February to April 2015 when he “was ordered inactive for failing to appear for a trial.” Nevertheless, plaintiffs received assurances that the “issues were unrelated and again that plaintiffs had nothing to worry about.”

On July 20, 2015, Jerry La Cues stipulated with the State Bar to a one-year suspension, which was approved by the California Supreme Court on November 17, 2015, and took effect December 17, 2015. Plaintiffs stated in their objections that they first learned of La Cues’s pending suspension on October 17, 2015. They then “attempted to get the assistance of Jerry La Cues and/or Brett La Cues to get replacement counsel,” including “financial assistance, concessions as to outstanding fees and/or costs, and/or referrals and cooperation in identifying and communicating with prospective new trial counsel.” The attempt to get such assistance was unsuccessful, however, and on November 17, 2015, plaintiffs “decided to terminate” the firm.

Plaintiffs stated that they were actively seeking new representation, that they had “a number of good leads and are pursuing other attorneys as well . . . .” They were “in discussions with no less than five attorneys that have not yet rejected” the case. They requested a “temporary hold on all motions, proceedings, and other conferences for a period of 90 days,” noting that the “current time pressure is making it much more difficult to get counsel . . . .”

At the December 18, 2015, hearing, the trial court considered giving plaintiffs a continuance of the trial and a stay of all proceedings as requested, opining that plaintiffs had been “abandoned” by their counsel and that they had not had the assistance of

“competent counsel for a long, long time.” The court also found, however, that plaintiffs had been on notice at least since July 2015 that “there were problems with [Jerry La Cues],” and that they had specific notice of his pending suspension since October 2015. The court requested that plaintiffs identify one of the attorneys they claimed they had talked to about taking on their case. But they refused to do so in the presence of Centex’s counsel, and the trial court declined to communicate with plaintiffs ex parte. The trial court therefore found plaintiffs’ representations that they had “talked to an attorney that is considering taking this case” to have “no credibility.” The trial court further found that a trial continuance would cause “some prejudice” to defendants, because of the “continued incurring of attorney fees.” On that basis, the trial court in essence denied plaintiffs’ request for a stay of proceedings and continuance of trial, overruling plaintiffs’ objections and confirming the previously set trial date of January 8, 2016.

## *2. Standard of Review*

We review a trial court’s ruling on a motion for a stay under the abuse of discretion standard. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 480.) Similarly, a trial court’s ruling on whether a particular hearing or trial should be postponed is reviewed for abuse of discretion. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 1004.) Under this standard, reversal is appropriate only if the trial court “exercised its discretion in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice.” (*Boeken, supra*, 127 Cal.App.4th at p. 1685.)

### 3. *Analysis*

Plaintiffs contend the trial court abused its discretion by overruling their objections, which were in substance a request for stay of the proceedings and a continuance of the trial. We disagree.

The substitution of trial counsel is, as plaintiffs note, one of the circumstances that “may indicate good cause” to continue a trial date under the Rules of Court. (Cal. Rules of Court, rule 3.1332(c).) But this is so only “where there is an affirmative showing that the substitution is required in the interests of justice.” (*Id.*, rule 3.1332(c)(4).) The trial court in essence found that that the interests of justice did not require a continuance of the trial to allow plaintiffs more time to find an attorney to replace their former counsel. There is nothing arbitrary, capricious, or patently absurd about that finding.

As the trial court acknowledged, the fact that plaintiffs had been “abandoned” by their previous counsel weighed in favor of granting a continuance. The trial court found, however, that plaintiffs had not been “proceeding with the kind of urgency that would be appropriate.” They either had been or should have been aware that there were problems with their counsel since at least July 2015, when they had learned of Jerry La Cues’s prior suspensions, and had been specifically aware of Jerry La Cues’s pending suspension since October 2015. Although plaintiffs stated they were actively looking for new counsel and suggested that they were on the verge of hiring new counsel, the trial court found those statements lacked credibility, since plaintiffs refused to name any of the attorneys with whom they had spoken about the case. The trial court also properly took

into account the prejudice to defendants from a continuance of the trial, and plaintiffs' repeated failures to comply with their discovery obligations, which had delayed trial readiness. We do not find the trial court's decision, balancing the relevant factors and finding them to weigh against the granting of a stay of proceedings or a continuance of trial, to be beyond the bounds of reason.

Plaintiffs assert that the trial court "gave only token consideration" to their requests for additional time, and that it "failed to exercise informed discretion" in reaching its conclusion. The record does not support this assertion. To the contrary, as discussed in some detail above, the record demonstrates the trial court carefully considered plaintiffs' arguments (and those of the defendants), gave plaintiffs repeated opportunities to develop a stronger showing in favor of a delay of the proceedings, and was fully informed of all the relevant circumstances when it finally made its rulings.

### III. DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

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RAPHAEL

J.

We concur:

RAMIREZ

P. J.

MCKINSTER

J.